IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO. 659 OF 2005

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri Abhay Sambre, Advocate for the appellants.
Shri B.S. Deshpande, Advocate for the respondents.

CORAM : V.G. MUNSHI, J.
31ST JANUARY, 2006

Heard the learned Counsel for the parties.

The respondents/plaintiffs claimed to be the owners and in possession of the fields Survey Nos.221, 222 and 223 situated in the village Parsodi. The appellants are the owners and in possession of the fields Survey Nos. 211 and 210 which are situated at the Northern side. The respondents/plaintiffs claimed right of way on the boundary of these fields for going from village Sindhi to village Dudha. The said right is exercised by them and their predecessors in title for last several years. Their right of way was obstructed by the predecessors in title of the appellants and, therefore, Fakira, father of the respondent No.1 was required to institute proceedings before the Tahsildar. The Tahsildar declared the right of way and accordingly

ordered restraining the appellants from obstructing the right of way. As the said order was not challenged by the appellants, it became final.

Again the appellants started creating obstruction to the right of way, therefore, the respondents were compelled to file Regular Civil Suit No. 155 of 1995 for permanent and mandatory injunction against the appellants. The suit was decreed. The appellants had filed an appeal being Regular Civil Appeal No. 21/2000 and it was dismissed by the III Ad-hoc Additional District Judge, Wardha, therefore, being aggrieved by the said judgment and order, the present Second Appeal came to be filed on number of grounds.

The learned Counsel for the appellants has taken us through the judgments and orders passed by both the Courts below. However, he could not point out that the findings recorded by them are perverse or contrary to the evidence on record. Secondly, both the Courts below recorded the concurrent findings of facts. Thirdly, no substantial question of law arises in this appeal. Lastly, the right of way which was declared and granted by the Tahsildar in the proceedings is instituted by Fakira and the decision was never challenged by the appellants and, therefore, it became final. The appeal is devoid of merits.

Therefore, Second Appeal No. 659 of 2005 is summarily dismissed. Civil Application No. 7799/2005 is also dismissed.

JUDGE

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